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JAMES R. BROWNING

IN THE

Supreme Court of the United States

October Term, 1960

No. 438

DON C. SINCLAIR, Trustee

Petitioner,

vs.

WILLIAM JOSEPH MANDA, Bankrupt,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Don C. Sinclair, Trustee, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on May 25, 1960.

CITATIONS TO OPINIONS BELOW

The Order On Homestead Exemption entered by the Referee in Bankruptcy is unreported and appears in the printed transcript of record, nine copies of which are submitted herewith, at page 11. The Order On Petitions For Review entered by the District Court (R. 17) is unreported. The opinion of the United States Court of Ap-

peals, Fifth Circuit, printed in Appendix A hereto, infra, App. 1-11, is reported in 278 F. 2d 629.

JURISDICTION

The judgment of the United States Court of Appeals, Fifth Circuit, was entered on May 23, 1960 (R. 109, App. 11, infra). Rehearing was denied on July 8, 1960 (R. 123, App. 12-13, infra). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

Whether the sole stockholder of a corporation that is actively engaged in business has a sufficient right, title or interest in the real property owned by the corporation as to entitle said stockholder to homestead exemption from forced sale under Article X, Section 1, of the Constitution of the State of Florida.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are Article X, Sections 1 and 5 of the Constitution of the State of Florida, F. S. A. Const. Art. X, §§ 1, 5, and read as follows:

> "Section 1. Exemption of homestead; extent. A *homestead to the extent* of one hundred and sixty acres of land, or the *half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State*, together with one thousand dollars worth of personal property, and the improvements on the real estate, *shall be exempt from forced sale*

under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes or assessments, or for the payment of obligations contracted for the purchase of said property, or for the erection or repair of improvements on the real estate exempted, or for house, field or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in this Article." (emphasis supplied)

"Section 5. Homestead area not reduced by subsequent inclusion in municipality. — *No homestead* provided for in section one *shall be reduced in area on account of its being subsequently included within the limits of an incorporated city* or town, without the consent of the owner." (emphasis supplied)

STATEMENT

The Respondent filed a voluntary petition in bankruptcy on August 23, 1957 (R. 1-10). The jurisdiction of the District Court was invoked because the case arises under the Bankruptcy Act.

The trustee, pursuant to the bankrupt's request, set aside to the bankrupt as one of his exemptions certain real property approximately eight acres in area, then filed an objection thereto.

The Referee, after hearing testimony, entered an Order On Homestead Exemption, holding that the bankrupt's exemption was limited to one-half acre (R. 11). The bankrupt filed a petition to review.

The District Court, after hearing argument of counsel, entered an Order On Petitions For Review, which among other things, affirmed the Referee's order limiting the bankrupt's exemption to one-half acre (R. 17). The bankrupt filed a notice of appeal (R. 19).

The Court of Appeals reversed the District Court, holding that the bankrupt was entitled to the entire eight acres as one of his exemptions (R. 98, App. 1-11, infra).

The pertinent facts, which are uncontroverted, are as follows: The bankrupt's land is approximately eight acres and lies within the Town of Haverhill, a municipality incorporated on May 3, 1950 (R. 36-37; TX. F, R. 48-72). The land when purchased in 1941, was vacant, approximately fifteen acres in area, and title was taken in the name of W. J. Maeda, Inc., a Florida corporation (R. 36-37; R. 78; TX. B, R. 8). The corporation, which had been in existence approximately ten years prior to 1941, was dissolved by proclamation of the governor on May 15, 1953, for non-payment of its corporate tax (R. 33, 36-37). At the time of dissolution, and at the present time, the corporation was and is the record title owner of said land (R. 33-34). The bankrupt was and always has been the sole stockholder of said corporation (R. 32-34). In about 1945, the bankrupt and his family moved onto said property and continued to live there until 1950, at which time he was divorced (R. 78-79; TX. G, R. 73-75). That as a part of the settlement in said divorce, the

wife received approximately seven acres of said land which was conveyed by a special warranty deed from W. J. Manda, Inc. and the bankrupt (TX. E. R. 45-46). The bankrupt has lived on said property alone since the divorce (R. 7[illegible]). That W. J. Manda, Inc. was actively engaged in business on May 3, 1950 (date of incorporation, Town of Haverhill [illegible] and had been in existence since approximately 1931 (R. 31-32, 34, 35). That the bankrupt, prior to his divorce in September, 1950, conducted his business through W. J. Manda, Inc. (R. 31) and said corporation filed tax returns (R. 32).

REASONS FOR GRANTING THE WRIT

The opinion of the Court of Appeals in the instant case holds:

1. That a stockholder of a corporation that is actively engaged in business has a "beneficial right in the property" owned by the corporation.

2. That as far as corporate owned property is concerned, a corporation that is actively engaged in business merely "holds title, legal or equitable or both" to such property for its stockholders.

The petition for a writ of certiorari should be granted for the following reasons:

I

A. The major premise of the decision of the court below, i.e., that a stockholder in a corporation that is actively engaged in business has *an interest in the land*

owned by the corporation, is in direct conflict with the decision of this Court in **Klein v. Board of Tax Supervisors**, 282 U.S. 19, 75 L. ed. 140, 51 S. Ct. 15.

In the **Klein** case, supra, Mr. Justice Holmes, discussing the distinction between a corporation and its stockholders, said (282 U.S. 19, 24):

> "The corporation is a person, and its ownership is a conception that makes it impossible to attribute an interest in its property to its members."

The decision in the **Klein** case, supra, was followed and quoted by the Circuit Court of Appeals, Sixth Circuit, in **Commissioner of Int. Rev. v. Southern Bell Tel. & Tel. Co.**, [illegible]

[illegible] the decision of the court [illegible] **Howell Turpentine Co. v. Commissioner of Internal Rev.**, [illegible] 162 F.2d 319, **Corley v. Cozart**, [illegible]

In the **Howell** case, supra, the late Judge Sibley, [illegible]

> "A stockholder as such has no title, legal or equitable, to the corporation's property. His interest is in the pro rata part of the residuum on liquidation. * * * ".

In the **Corley** case, supra, the Court, considering the question of a solely owned corporation, said (p. 121):

"* * * Although he was the sole stockholder he did not own the property of the corporation; he merely owned the capital stock. * * *"

C. The major premise of the decision of the court below is in direct conflict with the well established case law and jurisprudence of the State of Florida. **Brown v. Florida Southern Railway Co.**, 19 Fla. 472 (1882); 7 Fla. Jur., "Corporations," Secs. 51, 151.

In the **Brown** case, supra, the Court, in discussing the rights of a stockholder in corporate property, said (p. 479):

"A grant to a body corporate with power to make contracts in reference thereto for the purchase of and for accomplishing corporate purposes is not a grant to the original corporators in the proportion in which they have subscribed for stock in the company unallotted. The title vests in the corporation, and not in the individual stockholders, and the latter, on the winding up of the corporation, have no claim to the whole stock, but are private parties to such dissolution."

In 7 Fla. Jur., "Corporations," Sec. 51, we find the following (p. 375):

"By the very nature of a corporation, the corporate property is vested in the corporation itself and not in the individual stockholders, who have neither legal or equitable title in the corporate property."

The interest of a stockholder is again defined in Sec. 151. of the same topic, as follows (p. 471):

> "While one, upon becoming a stockholder in a corporation, acquires an interest in the property and franchises of the corporation in the proportion of the stock subscribed by him bears to the aggregate amount subscribed by others, *this fractional interest is not proprietary in nature, that is in the sense that he acquires individual title to the property of the corporation.*" (emphasis supplied)

II

Clearly, the question presented is of importance in the administration of the federal bankruptcy laws. Moreover, the decision of the court below, if permitted to stand, will have a far reaching effect on the Florida law of dower, homestead, mortgages, probate and real property. Anyone examining the title to real property, held by a corporation, would have to determine whether it is homestead. To be safe, the stockholder and his wife would have to be joined, otherwise, the property could be considered homestead, and the conveyance would be void under Florida law. **Bigelow v. Dunphe**, 143 Fla. 663, 197 So. 278; Art. X, 1, Fla. Const. The same problem is present in connection with mortgages and probate as Art. X, 31, Fla. Const. prescribes the method of encumbering and disposing of homestead property.

III

It is respectfully submitted that the court below failed

to apply and or misapplied the applicable Florida law, viz., that the person claiming the exemption under Article X, Section 1, Constitution of the State of Florida, *must have some interest in the land* sought to be exempted. **Menendez v. Rodriquez**, 106 Fla. 214, 221, 143 So. 323, 226.

The instant case was decided by Judges Cameron, Rives and Wisdom, none of whom are Florida lawyers. By their decision they reversed the Referee in Bankruptcy, a Florida lawyer, and the District Judge, a Florida lawyer, on a matter involving the construction and interpretation of a provision of the Florida Constitution. As authority for their decision, the court below cited a number of Florida cases. However, none of the cases cited involved a corporation, actively engaged in business, which took title initially in the corporate name. Nor do said cases suggest that a stockholder *has any estate in land* which is owned by the corporation. The cases are readily distinguishable and, we submit, are not authority for the decision of the court below.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated this 23rd day of September, 1961.

ROBERT M. STURRUP

Counsel for Petitioner
10th Floor Dade Federal Bldg.
Miami 32, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing petition for a writ of certiorari was mailed to Warwick, Paul & Warwick, Attorneys for Respondent, 703 Citizens Building, West Palm Beach, Florida, this 23rd day of September, 1960, by depositing same in a United States Post Office with first class postage prepaid.

ROBERT M. STURRUP

Counsel for Petitioner

APPENDIX A

The opinion and judgment below are as follows:

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17907

WILLIAM JOSEPH MANDA, Bankrupt

Appellant,

versus

DON C. SINCLAIR, Trustee

Appellee.

Appeal from the United States District Court for the Southern District of Florida

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May 23, 1960

Before CAMERON, BROWN, and WISDOM, Circuit Judges.

BROWN, Circuit Judge. We here deal with appeals from two orders in bankruptcy. In both the Bankrupt, not the Trustee or a Creditor, is the sole appellant. We dismiss one and sustain the other.

The first relates to a chattel mortgage given to the Bank of Palm Beach and Trust Company as security for $750 then advanced by the Bank and paid over to the Bankrupt's attorney who was also an officer of the lending Bank. The entire transaction took place the day before the filing of the petition for bankruptcy. The Trustee filed a petition to have the chattel mortgage declared void as to the Trustee. Among other grounds, the Trustee urged that it was void as not timely recorded under Florida Statutes 698.01, 319.27 (2). Further, while the 21-day grace period under §69 (a) (7) I (B), 11 USCA §96 (a) (7) I (B) (1959 Supp.), might apply to transactions within §60, it was not relevant to the Trustee's rights under §70 (c), 11 USCA §110 (c).

The Referee denied this relief on the ground that the Bankrupt had received value so that the estate was not diminished. On the Trustee's petition for review, the District Court reversed this action of the Referee and held that the chattel mortgage to the Bank was invalid as to the Trustee.

But the Bank did not appeal. It was the Bankrupt who alone appealed. The right of appeal within 30 days is, of course, extended "to the aggrieved party." 11 USCA §48. Under the rules of this Court and General

See Rule 31, Rules of the United States Courts of Appeals (1968 Supp.).

"Appeals in proceedings in bankruptcy and to review orders and decrees of proceedings in bankruptcy taken under Sections 24 and 25 of the Bankruptcy Act as amended June 22, 1938 in respects not provided for in said Sections or by the General Orders in Bankruptcy shall be governed by the rules for appeals in civil actions."

Order in Bankruptcy 36, the Federal Rules of Civil Procedure apply unless otherwise prescribed.

This brings into play F.R.Civ.P. 73 (b) which provides that "The notice of appeal shall specify the parties taking the appeal." The notice of appeal here names the Bankrupt only. It does not undertake to name the Bank, nor does it prosecute the appeal for the Bank.

It was the Bank whose rights were directly and adversely affected. The Bankrupt, while unhappy, was not aggrieved. In re Michigan-Ohio Bldg. Corp., 7 Cir., 1941, 117 F.2d 191. If the chattel mortgage was valid, the Bank alone had the security and the equity, if any, was an asset of the Bankrupt subject to administration. If the mortgage was invalid, what the Bank lost, did not become property in which the Bankrupt would, apart from the estate, have any interest.

The suggestion is made, and not seriously disputed, that the Bankrupt from funds not identified has since paid off the Bank. From that, it is argued that since the Bank has been paid, the Bankrupt will be hurt if he cannot step into the shoes of his secured Creditor (Bank) either to get the property or avoid the possibility of the Bank having to restore the amounts so received. But this pain to the Bankrupt does not flow from the order. It stems from the extra-legal conduct of the Bankrupt. If the Bank has to disgorge — and that is not before

[illegible]

Appeals shall be regulated in all other respects [illegible] the rules governing appeals in civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States.

us, nor has any such order yet been entered so far as we are informed—it is the Bank that hurts. It alone has the appeal.

Consequently, for want of an aggrieved party, the appeal as to the chattel mortgage is dismissed without ever reaching the merits.

The second appeal relates to the exemption claimed by the Bankrupt as to 7 acres of land in the Town of Haverhill under the homestead provisions of §1 Art. X of the Florida Constitution.

The Trustee did not dispute either the status of the Bankrupt as the "head of a family," or the occupancy of the premises by the family with the Bankrupt as its head from which the status of a homestead would arise. Cf. In re: Noble's Estate (Fla. 1951), 53 So. 2d 873; **Bigelow v. Dumphe**, 1940, 143 Fla. 283, 197 So. 328, 330. On the contrary the Trustee concedes, and the Referee and the District Court agree, that Bankrupt was entitled to a

Section 1. Exemption of homestead, extent.

A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State together with one thousand dollars worth of personal property, and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes or assessments, or for the payment of obligations contracted for the purchase of said property, or for the erection or repair of improvements on the real estate exempted, or for the house, field or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in the Article." FLA. CONST. Art. X, §1.

homestead exemption. The dispute concerns only the size of the property exempt. This arises because the property is within the corporate limits of Haverhill as to which the Constitution, note 3, supra, confines the exemption to "the half of one acre within the limits of any incorporated city or town." FLA. CONST., Art. X, §1. This in turn brings into question the geographical extent of Bankrupt's homestead as of the date of incorporation of Haverhill since §5 (Art. X) of the Constitution provides that no §1 homestead "shall be reduced in area on account of its being subsequently included within the limits of an incorporated city or town." . . ." **Morgan v. Bailey**, 1925, 90 Fla. 17, 105 So. 143; **Croker v. Croker**, D.C.Fla., 7F. 2d 219.

The land, when purchased in 1941, comprised 15 acres. Title was taken in the name of W. J. Manda, Inc., a Florida corporation wholly owned by Bankrupt. The land was not then occupied. But in 1945 Bankrupt sold his former home and with his wife and family moved onto the property here involved. They continued to make this their actual home. From the date of acquisition down through May 3, 1950, the land was not in an incorporated area. On that date the Town of Haverhill was incorporated. But while Haverhill was being consolidated through incorporation, the Manda household was breaking up. Bankrupt and his wife were divorced a few months later on September 27, 1950. Pursuant to the property settlement approved in the divorce decree, 7 acres were conveyed to Mrs. Manda, the former wife, by warranty deed executed by the corporation and Bankrupt individually. Thereafter Bankrupt, as head of a family, continued to occupy the remaining 8 acres as a homestead. During all of this time he claimed, and was

allowed, the homestead *tax* exemption secured under §7 (Art. X) of the Florida Constitution.

In the meantime, perhaps with the stillness of night and with no indication here that what was happening was known to Bankrupt, the corporation was automatically dissolved on May 15, 1953, for nonpayment of state taxes. On dissolution the directors are statutory trustees holding title for the benefit of the stockholders — here the Bankrupt alone.

On this the Trustee argued — so far successfully — that while dissolution of the corporation in May, 1953 vested Bankrupt with sufficient ownership to give him personally a homestead exemption, this did not come into being until after the municipal incorporation 1950. Consequently, the homestead would be limited to one-half an acre.

If this §1, Florida constitutional homestead exemption rested on *title*, this would be correct. But Florida courts have approached this constitutional guarantee in quite a different way. It is not concerned with title nor with relative equities. It is a policy to protect the family and the survivors of a family against economic misfortune. Preservation of the home, even to the detriment of faultless creditors, is the great aim. About this constitutional provision, this Court pointed out the contrast between what it there described as the Shakespearean "pound of flesh" approach to strip the debtor naked and the policy of the Florida Constitution. "In the United

4 See Florida Statute [illegible] by proclamation of the Governor

States public policy has looked beyond the debtor to his family, when he has one, and has regarded the reasonable protection of the family as of greater concern than the full payment of debts. The resulting homestead laws are peculiarly American." **Beall v. Pinckney**, 5 Cir., 1945, 150 F. 2d 467 at 470. And a brief consideration of a few of the Florida cases demonstrates the foundation for our statement that "while the Constitution speaks of the homestead as owned by the head of a family, the expression is not to be taken too strictly * * *." **Beall v. Pinckney**, 150 F.2d 467, 470. **Pasco v. Harley**, 1917, 73 Fla. 819, 75 So. 30, recognizes that the head of a family occupying the premises has an exemption "to the extent of any right, title or interest." 75 So. 30 at 33. The term "interest" does not mean title and it "denotes a beneficial property right in the land." 75 So. 30 at 34. Following this liberal approach, there "may be homestead exemptions in the equity of redemption in mortgage property." 75 So. 30 at 34. There, as in **Hill v. First National Bank**, 1917, 73 Fla. 1092, 75 So. 614, at 616, the Court pointed out that the "exemptions from forced sale * * *" of certain homestead property "owned by the head of a family * * *" have reference to the beneficial interests "owned by the head of a family * * *." In **Hill** the question was whether a deed given by a mother to her son was as she asserted and the court agreed "intended to operate only as a will." On the assumption that it was a deed absolute with the grantee acquiescing in her continued possession during her lifetime, the Court held this sufficient ownership. "But, even if she merely retained possession of the land, it is of sufficient value to her to have it protected under the homestead law, and it is no concern whatever to the creditor that another has the superior title." 75 So. 614 at 617. In **Menendez v. Rodriquez**, 106 Fla. 214, 221, 143 So. 223,

226 (concurring opinion), it was pointed out that the homestead exemption attaches to "any estate in land owned by the head of a family * * * whether it is a freehold or less estate * * *." In **Bigelow v. Dunphe**, 1949, 143 Fla. 603, 197 So. 328 at 330, the Court quotes with approval 26 Am. Jur. 56 at 10 (Homestead) concerning the beneficient policy of such exemptions. "The statutes are intended to secure to the householder a home for himself and family, regardless of his financial condition * * *, and *without any special regard to the character of the estate or title by which the homestead property may be owned.* * * *." (emphasis supplied). All of this was re-emphasized in **Bessemer Properties, Inc. v. Gamble**, Fla. 1946), 27 So. 2d 832, 833. This homestead exemption statute "should be liberally construed in the interest of the home, and * * * a homestead exemption extends to any right or interest the head of a family may hold in land * * *. It is not essential that he hold the legal title to the land. This court has also held that a one-half interest, the right of possession, or any beneficial interest in land gave the claimant a right to exempt it as his homestead. * * * If the homestead status attached prior to proceedings to subject the property to creditor's lien, regardless of where the title is lodged, it is exempt. * * *" (citing cases) **Beall v. Pinckney**, 5 Cir., 150 F. 2d 467." 27 So. 2d 832 at 833.

Judge Waller, himself long experienced in Florida law made a significant statement for this Court in **Doing v. Riley**, 5 Cir., 1949, 176 F.2d 449 at 456. After discussing **Bessemer Products, Inc. v. Gamble**, supra, and **Nelson v. Franklin**, 152 Fla. 694, 12 So. 771, Judge Waller pointed out the distinction between the "interest" which would give to the head of a household the right to claim a defensive exemption, on the one hand, and, on the other

an acquisition of some character of title. **Bessemer v. Gamble**, supra, "did not hold that he thereby achieved a muniment of title to the entire estate but merely that he had an equitable interest that was sufficient, as a matter of defense, against the execution."

In the light of this Florida approach, the record here is compelling that Bankrupt is entitled to an exemption of the 5 acres remaining after the conveyance to his former wife. The facts are overwhelming that this property was occupied by Bankrupt both at the time of the municipal incorporation (May, 1950) and at the time of the dissolution of his wholly owned corporation (May, 1953). This was his home and where he presided as the head of a family. Every action showed it to be a homestead. Within but a few months after the municipal incorporation the Manda divorce occurred. While losing his wife, Bankrupt was not being divorced from the corporation. Nevertheless, in the dissolution of marriage, the wife received not one-half of the stock, but one-half of the legal rights. And she got that by a deed signed by Bankrupt personally. In the interim the Bankrupt claimed and received the tax exemption as a homestead. We recognize that there are substantial differences between the tax exemption of F. A. Art. X and the exemption from execution sale. See **Doing v. Riley**, 5 Cir., 156 F.2d 129, 133; **Miller v. West Palm Beach Atlantic National Bank**, 1940, 142 Fla. 22, 194 So. 230; **Nelson v. Franklin**, 1943, 152 Fla. 6, 14 So.2d 771; **Shambow v. Shambow**, 1943, 152 Fla. 760, 13 So.2d 836. But this circumstance was relevant in determining the status of Bankrupt as head of a family, his residence on the property and its use as an actual homestead. The Bankrupt by the long continued sufferance of the corporation had a clear right of possession. That

alone was adequate **Hill v. First National Bank**, supra, 75 Fla. 1092, 75 So. 614, 617.

He had a beneficial right in the property and that is all Florida requires. It is immaterial that under accepted Florida corporation principles, this would not be a legal title or might not be catalogued as an "equitable" interest or title. The Trustee makes the mistake of thinking that recognition of a homestead exemption in the full tract as of the date of municipal incorporation is the equivalent of disregarding the corporate fiction contrary to Florida law. If we must analogize, it is not a case of piercing the corporate veil to vest in the Bankrupt a title. Rather, the theory is that the corporation holds title, legal or equitable or both, for the Bankrupt just as did the wives in whom the husband put the title in **Bessemer Properties, Inc. v. Gamble**, supra; **Coleman v. Williams**, 1941, 146 Fla. 45, 200 So. 207; and **Beall v. Pinckney**, supra.

The homestead exemption was not, therefore, confined to the one-half acre as city property. It covered the full tract owned by Bankrupt on the date of bankruptcy. The order of the District Court must therefore be reversed and the cause remanded for further consistent proceedings.

APPEAL DISMISSED IN PART, REVERSED AND REMANDED IN PART.

The Trustee cites Brown v. Florida Southern Railway Co., 18 [illegible] 474; Howell Turpentine Co. v. Commissioner, 5 [illegible] 310. He likewise refers to opinions of the Florida Attorney General [illegible] No. 047-60 relating to tax exemption under §7, Art. X

JUDGMENT.

Extract from the Minutes of May 23, 1960

WILLIAM JOSEPH MANDA, Bankrupt,

No. 19707 versus

DON C. SINCLAIR, Trustee,

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel,

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that; for want of an aggrieved party, the appeal as to the chattel mortgage in this cause be, and the same is hereby, dismissed; and that the order of the said District Court as to the homestead exemption be, and it is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further consistent proceedings.

It is further ordered, adjudged and decreed that the appellee, Don C. Sinclair, Trustee, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX B

(Original Filed: July 8, 1960)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19707

WILLIAM JOSEPH MANDA, Bankrupt,

Appellant,

versus

DON C. SINCLAIR, Trustee,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

(July 8, 1960)

ON PETITION FOR REHEARING

Before CAMERON, BROWN and WISDOM, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause be, and the same is, hereby DENIED.

A true copy

s/ EDWARD W. WADSWORTH

Test

EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals,
Fifth Circuit
New Orleans, Louisiana

JUL 23 1959